

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 99-cr-209-pp

v.

ROBERTO I. LOPEZ,

Defendant.

ORDER DENYING REQUEST FOR DISCOVERY (DKT. NO. 571)

Over twenty years ago, on October 26, 2000, the parties filed a plea agreement. Dkt. No. 242. On March 7, 2001, Judge Charles N. Clevert, Jr. sentenced the defendant to serve 180 months in prison followed by five years of supervised release. Dkt. No. 329. The time for the defendant to appeal or to file a motion to vacate, set aside or correct his sentence under 28 U.S.C. §2255 has long passed.

On June 16, 2021—again, over twenty years after his sentencing—the court received from the defendant a document requesting all discovery from the “D.A. office.” Dkt. No. 571. The document asked specifically for DNA evidence and test results, indicating that a DNA sample was taken and noting that the court required the prosecutors to disclose Brady evidence. Id. at 2-3. The document also stated, “Knight wrongfully convicted the supreme court would be the appropriate forum for a petition alleging that appellate counsel was ineffective in his or her representation of a defendant before that court. See,

State v. Knight, 168 Wis.2d 509.” Id. at 4. Attached to this request was a June 9, 2021 letter from the defendant. Dkt. No. 571-1. The letter is addressed to “Wis. Supreme Court. United States Dist. Court Eastern Dist. of WIS 362 U.S. Courthouse, 517 E. Wis. Ave. Milwaukee, WI 53202.” Id. at 1. The letter says that the defendant is writing to express his dissatisfaction with the state court of appeals order dated June 13, 2021. Id.

The court believes that the defendant is addressing his concerns to the wrong court, or in the wrong format. The court reviewed the Wisconsin Circuit Court Access Program (“WCCAP”), the publicly-available court of appeals docket. There was an appeal, Lopez v. Tegels, Appeal No. 2020AP000720, in which the defendant appears to have appealed from a denial of a state petition for a writ of *habeas corpus*. (Available at <https://wscca.wicourts.gov/>). The docket shows that on *May* 13, 2021, a panel of the court of appeals denied the defendant’s petition for a writ of *habeas corpus*. On June 23, 2021, the appeals court received a letter from the defendant, objecting to that ruling.

The court believes that the defendant now wants to appeal, or attack, the Wisconsin Court of Appeals’ May 13, 2021 ruling denying his petition for a writ of *habeas corpus*. The defendant is free to try to appeal that ruling. But this court is not the appellate review court for an unsatisfactory ruling from the Wisconsin Court of Appeals. Someone who is dissatisfied with a ruling in the Wisconsin Court of Appeals must file a petition for review with the *Wisconsin Supreme Court*. This is not the Wisconsin Supreme Court—this is the *federal* trial court. If the defendant wants to file a petition for review with the

Wisconsin Supreme Court, he should send that petition to the Wisconsin Supreme Court at Clerk, Wisconsin Supreme Court, P.O. Box 1688, Madison, WI 53701-1688. The defendant should be aware that there are time limits for filing a petition for review.


Perhaps the defendant is seeking to file a “collateral attack” on the Wisconsin Court of Appeals decision by filing a federal petition for a writ of *habeas corpus*. If this is what the petitioner is trying to do, he may face several obstacles, including the fact that he does not yet appear to have appealed to the Wisconsin Supreme Court. Also, a person seeking to file a petition for a federal writ of *habeas corpus* must use the court’s form petition. The court has attached a blank copy for the defendant to review.

There is nothing more that the court can do with the defendant’s request for discovery from the district attorney’s office—the court does not have the jurisdiction or authority to grant that request.

The court **DENIES** the defendant’s request for discovery. Dkt. No. 571.

Dated in Milwaukee, Wisconsin this 6th day of July, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge